HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.124 of 2007

Between:

Uppal Municipality,
Rep., by its Commissioner,
Uppal, R.R. District

... Appellant

And

Kuna Srinivasa Rao and five others

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri P. Radhakrishna

Counsel for respondent Nos.1 and 2: Shri P. Venkataramana for
Shri V. Venkataramana

February 06, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 7-2-2006 passed by the learned Single Judge in Writ Petition No. 2235 of 2006, whereby he directed the competent authority of Uppal Municipality (the appellant herein) to decide the application made by the writ petitioners for grant of building permission.

In the writ petition filed by them, respondent Nos. 1 and 2 complained that they had applied for permission for construction of building on plot No.10 measuring 255 square yards in Survey No.44 of Ramanthapur Village, Uppal Mandal, Ranga Reddy District, but the concerned municipal authorities arbitrarily refused to entertain their application on the ground that the plot may ultimately fall in the submergence of the full tank level of Pedda Cheruvu tank/Ramanthapur tank. Respondent Nos. 1 and 2 relied on order dated 13.04.2005 passed by this Court in Writ Petition No.16397 of 2004 and pleaded that they are entitled to raise construction subject to the conditions similar to those imposed in that case.

The learned Single Judge did not grant relief to respondent Nos.1 and 2 in terms of the prayer made by them, but disposed of the writ petition by directing non-petitioner No.1 (the appellant herein) to decide their application in accordance with the provisions of the Andhra Pradesh Municipalities Act, 1965, the building rules and regulations and master plan of the urban development authorities. The operative part of the order passed by the learned Single Judge reads as under:

> "Having regard to the facts and circumstances and in view of the submission made by the petitioners, I consider it appropriate to direct the petitioners to furnish an undertaking that they would construct the building as per the building

> rules etc., at their own risk and would not claim any compensation for the building in the event of the respondents initiating proceedings for acquiring land for preserving the full tank level and since the land of the petitioners presently is outside the tank area, there can be no impediment for the respondents processing the application of the petitioners keeping in view the said undertaking. Therefore, the writ petition is disposed of with a direction to the first respondent to consider the application of the petitioners and see whether it is in accordance with the provisions of the AP Municipalities Act and the building rules and regulations and master plan etc., of the Urban Development Authorities and if all the requirements are satisfied, not to reject the same merely on the basis that it falls within the full tank level of Pedda Cheruvu and consider the same subject to the undertaking given by the petitioners that they are undertaking the construction at their own risk and would not claim compensation for the building, or for the other eventualities in case of risk of acquisition for preserving the land for full tank level."

We have heard Shri P. Radhakrishna, learned counsel for the appellant and Shri P. Venkataramana, learned counsel for respondent Nos. 1 and 2 and perused the record. In our opinion, the appeal is wholly meritless and is liable to be dismissed with costs.

A reading of the order under challenge shows that the learned Single Judge has not issued a mandamus for

grant of building permission to respondent Nos. 1 and 2, but merely directed the concerned authority to deal with and dispose of their application in accordance with law. In our opinion, the appellant cannot have any legitimate grievance against the direction given by the learned Single Judge because while considering the application of respondent Nos. 1 and 2, the concerned authority is entitled to take into consideration the relevant statutory provisions and orders issued by the Government from time to time. As a matter of fact, if the concerned officer of the appellant had discharged his statutory duty to decide the application made by respondent Nos. 1 and 2, this Court would not have been burdened with unnecessary litigation.

With the above observation, the appeal is dismissed. For filing frivolous appeal, the appellant is saddled with costs of Rs.5,000/- which shall be deposited with the Andhra Pradesh State Legal Services Authority within one month. The State Government should ensure that the amount of costs is recovered from the salary of the officer found responsible for filing frivolous litigation.

As a sequel to dismissal of the appeal, WAMP No. 209 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 06, 2007
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